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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STATE BANK OF TEXAS,
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13 Plaintiff,
14 v.
15 SAM PARABIA, *ET AL.*,
16 Defendants.
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Case No.: 14-cv-3031-L-KSC

ORDER:

**(1) DENYING DEFENDANTS PERIN
AND SAM PARABIA'S MOTION TO
SET ASIDE DEFAULT JUDGMENT
[Doc. No. 284]; AND**

**(2) DENYING DEFENDANTS PERIN
AND SAM PARABIA'S MOTION
FOR TEMPORARY RESTRAINING
ORDER [Doc. No. 285]**

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21 By order filed September 15, 2017, the Court granted Plaintiff's motions for default
22 judgment against Defendants Sam and Perin Parabia, Farzin Morena ("Morena") and Ayer
23 Capital Advisors, Inc. ("Ayer"), thus allowing judicial foreclosure sale of the residence
24 owned by Defendants Parabia to go forward. (Doc. No. 84 (the "September 15, 2017
25 Order")). Subsequently, the Court overruled Perin Parabia's Objection to U.S. Marshal's
26 Sale (Doc. No. 164 (the "December 19, 2017 Order")). On October 4, 2019, Defendants
27 Perin and Sam Parabia filed a Motion to Set Aside Default and Default Judgment based on
28 Federal Rules of Civil Procedure 60(b)(3) and (5). *See* Doc. 284-1. Also, Defendants filed

1 a motion for a Temporary Restraining Order seeking to stay the October 9, 2019 sale of
2 the Parabias residence (7213 Romero Drive, La Jolla, California). For the reasons stated
3 below, both motions are DENIED.

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5 **I. BACKGROUND**

6 In 2009, National Republic Bank of Chicago ("Republic") extended a home loan to
7 the Parabias for \$1 million. The loan was accompanied by a promissory note and secured
8 by a deed of trust ("Deed of Trust") on the property located at 7213 Romero Drive in La
9 Jolla, California ("Property"). The Federal Deposit Insurance Corporation ("FDIC") took
10 receivership of Republic. On October 24, 2014, Plaintiff acquired Republic's assets from
11 the FDIC, including all rights to the Parabias' loan, promissory note and deed of trust.

12 Shortly thereafter, Plaintiff filed this action for judicial foreclosure against the
13 Parabias, who were in default. In July 2015, the parties settled. On July 7, 2015, they filed
14 a Stipulation for Entry of Judgment of Foreclosure and Order of Sale ("Stipulation"),
15 together with the underlying Settlement Agreement and Mutual Release ("Settlement")
16 (*See* doc. no. 27 & 27-1.) The Court approved the Stipulation and entered Order Granting
17 Joint Motion for Judgment of Foreclosure and Order of Sale. (Doc. No. 28.)

18 On March 1, 2016, a day before foreclosure, Citizens Business Bank ("Citizens")
19 filed a Judgment Lienholder's Objection to U.S. Marshal's Sale, claiming to hold a lien on
20 the Property. (Doc. No. 48). On March 25, 2016, Plaintiff filed a motion to vacate the
21 judgment because, in preparation for the sale, it discovered that in addition to Citizens,
22 Morena and Ayer also held liens on the Property. (Doc. Nos. 51 & 53.) The judgment was
23 vacated, and Plaintiff filed the Verified Second Amended and Supplemental Complaint for
24 Judicial Foreclosure on Deed of Trust ("Second Amended Complaint") against the
25 Parabias, Morena, Ayer and Citizens for judicial foreclosure free and clear of junior liens.
26 The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

27 Of all Defendants, only Citizens appeared in response to the Second Amended
28 Complaint. Defaults were entered against the Parabias, Morena and Ayer. Plaintiff filed

1 a motion for default judgment against the non-appearing Defendants, and a summary
2 judgment motion against Citizens, seeking a finding that Citizens' lien is junior to
3 Plaintiff's. On September 15, 2017, the motions were granted. The Court found that
4 Plaintiff held a lien senior to the Citizens' lien, and entered default judgment against the
5 remaining Defendants. This allowed Plaintiff to seek a writ of execution and proceed with
6 the U.S. Marshal's sale.

7 On November 13, 2017, Perin Parabia filed the Objection, requesting that the default
8 and judgment of sale be set aside pursuant to Federal Rules of Civil Procedure 55(c) and
9 60(b)(1). The December 19, 2017 order overruled Defendant Parabia's objections. On the
10 eve of the sale of the Parabia residence, Defendants Perin and Sam Parabia filed a Motion
11 to Set Aside Default and Default Judgment based on Federal Rules of Civil Procedure
12 60(b)(3) and (5). Also, Defendants filed a motion for a Temporary Restraining Order
13 seeking to stay the October 9, 2019 sale of the Parabia residence.

14 15 **II. DISCUSSION**

16 **A. Rule 60(b)(3)**

17 Under Federal Rule of Civil Procedure 60(c)(1), a rule 60(b)(3) motion must be
18 made within a reasonable time and no later than a year after entry of the judgment or order.
19 "To prevail [under Rule 60(b)(3)], the moving party must prove by clear and convincing
20 evidence that the verdict was obtained through fraud, misrepresentation, or other
21 misconduct and the conduct complained of prevented the losing party from fully and fairly
22 presenting the defense." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004)
23 (quoting *De Saracho v. Custom Food Machinery, Inc.*, 206 F.3d 874, 880 (9th Cir. 2000)).
24 The instant motion attempts to set aside the September 15, 2017 default judgment on the
25 basis of fraud. However, the instant motion is untimely as it was not filed in a reasonable
26 amount of time, clearly beyond the one year deadline. Notwithstanding, the Court finds
27 that Defendants have not provided clear and convincing evidence that the default judgment
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1 was obtained by fraud. Accordingly, Defendants’ motion to set aside the default judgment
2 on Rule 60(b)(3) grounds is DENIED.

3 **B. Rule 60(b)(5)**

4 A court may relieve a party from a final judgment or order if “the judgment has been
5 satisfied, released, or discharged[.]” Fed. R. Civ. P. 60(b)(5). Defendants assert, “the
6 matter had been settled [by] mutual agreement between Sam Parabia and State Bank of
7 Texas on January 21, 2016.” Doc. 284-1 at 5. Defendant further claim that Chan Patel,
8 acting as Chairman of State Bank of Texas, entered into a novation to the note and deed of
9 trust on the Parabia residence, in which the foreclosure matter would be settled upon Mr.
10 Parabia’s payment of “2,4211,740 [sic] Indian Rupees[] (\$357,000.00)[.]” *Id.* Defendants
11 rely on four exhibits to demonstrate satisfaction of the judgment. *See* Doc. No. 284-2.
12 However, upon review, the Court finds that none of these documents demonstrate
13 satisfaction of either the default judgment or the underlying foreclosure matter. In fact, the
14 Parabia residence is not even mentioned these documents. As such, the Court further finds
15 that Defendants have not carried their burden. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502
16 U.S. 367, 383 (1992). Accordingly, Defendants’ motion to set aside the default judgment
17 on Rule 60(b)(5) grounds is DENIED.

18 **C. Motion for Temporary Restraining Order**

19 Federal Rule of Civil Procedure 65 provides authority to issue preliminary
20 injunctions or temporary restraining orders. The purpose of these orders is to preserve the
21 status the parties’ relative positions until a full trial on the merits can be conducted. *See*
22 *Univ. of Texas v. Camenish*, 451 U.S. 390, 395 (1981). Generally, a plaintiff “must
23 establish that he is [1] likely to succeed on the merits, [2] that he is likely to suffer
24 irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in
25 his favor, and [4] that an injunction is in the public interest.” *Am. Trucking Ass’ns v. City*
26 *of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2001). Plaintiff fails to establish a likelihood
27 of success or that a temporary restraining or serves the public interest. As such, denial of
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1 Defendants' motion is required. Accordingly, Defendants' motion for a temporary
2 restraining order is DENIED.

3 **IT IS SO ORDERED.**

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5 Dated: October 8, 2019

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7 Hon. M. James Lorenz
8 United States District Judge
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